

July 22, 2016

Robert deV. Frierson
Secretary
Board of Governors of the Federal Reserve System
20th Street & Constitution Avenue, N.W.
Washington, DC 20551

RE: Notice of Proposed Rulemaking on Incentive-Based Compensation Arrangements
Docket No. 1536
RIN No. 7100 AE-50

Dear Mr. deV. Frierson:

M&T Bank Corporation (“M&T”) has reviewed the Notice of Proposed Rulemaking on Incentive-Based Compensation Arrangements (the “Proposal”) by the Board of Governors of the Federal Reserve System (“FRB”) with the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Federal Housing Finance Agency, the National Credit Union Administration and the U.S. Securities and Exchange Commission (the “Agencies”). On behalf of M&T, Mr. Brent D. Baird, Chairman of the Nomination, Compensation and Governance Committee of M&T’s Board of Directors, and Mr. Robert G. Wilmers, Chairman and Chief Executive Officer, I thank you for the opportunity to comment on the Proposal.

In recent years, M&T has made extensive enhancements to its incentive-based compensation programs to align with the *Guidance on Sound Incentive Compensation Policies* (the “Guidance”) and appropriately balance risk and reward. After reviewing the Proposal, we are concerned about its prescriptive nature and believe we would have to discard many of the enhancements we have made in order to adopt what we view to be an overly burdensome “one size fits all” approach to incentive-based compensation that would overlook the risk profiles of our organization and employees and would therefore insufficiently reinforce our enterprise risk management framework.

M&T is a conservative, community-focused, commercial bank that does not offer, nor engage in, the same high-risk products, investments and business lines as larger, multi-national Wall Street banks. Yet, despite the three-level approach proposed, the Proposal would effectively treat us as such an organization by requiring uniform incentive compensation structures and risk balancing mechanisms. Additionally, the Proposal defines significant risk-takers based on analyses of large, international banking organizations and minimizes the varying risk profiles and complexities of the impacted banking organizations.

Consequently, M&T fully supports the recommendations made in the July 22, 2016 comment letter submitted by The Clearing House Association, L.L.C. (“The Clearing House”) in response to the Proposal, which calls for significant changes to the Proposed Rule and advocates for the continued use of the principles-based framework provided in the Guidance. As properly asserted by certain of the Agencies in the Guidance, a principles-based framework is “the most effective way to address incentive

compensation practices, given the difference in size and complexity of banking organizations covered by the guidance and the complexity, diversity, and range of use of incentive compensation arrangements by those organizations.”¹ This flexibility appears to have been discounted when the Agencies defined “significant risk-takers” in the Proposal. In conjunction with the comments submitted by The Clearing House, M&T would like to expand on the commentary regarding the Proposal’s significant risk-taker definition and the potential unintended consequences M&T would face when implementing and complying with the Proposal.

The Definition of Significant Risk-Taker, As Proposed, is Too Broad

Since the issuance of the Guidance, M&T has expended extensive effort and financial resources on developing a sustainable process for identifying employees that are deemed to be material risk-takers based on the inherent risk profile of their jobs and responsibilities. During this time, M&T has worked closely with the FRB to assure that our process is aligned with the Guidance. In contrast, in its definition of significant risk-takers, the Proposal suggests that the amount of total compensation an employee is awarded is a sufficient indicator of an employee’s capacity to put an organization at risk of material loss without regard to the actual assessment of the inherent risks of the employee’s activities within the organization.

We believe that our current process to identify material or “significant” risk-takers using the flexible, inherent risk-based approach afforded by the Guidance is more appropriate and suitably aligned with the intention of Section 956 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. Our preliminary analysis to identify significant risk-takers in accordance with the Proposal has yielded results that would include employees earning annual base salaries of less than \$100,000 and total annual compensation of less than \$200,000 under the exposure test, and less than \$350,000 total annual compensation under the relative compensation test. Combined, the two tests would yield a population of approximately 312 significant risk-takers, which more than triples the number of employees identified as category 2 material risk-takers under the Guidance. Due to M&T’s conservative pay practices and model of consensus-driven decision-making, a significant number of employees would be identified as significant risk-takers who alone have no reasonable potential to expose the organization to risk of material financial loss (e.g., senior managers within the human resources division who were previously identified as category 3 covered employees under the Guidance). As a result, their incentive compensation would be subject to downward adjustment, deferral, forfeiture and clawback requirements that are disproportionate to their compensation levels or their actual ability to jeopardize the safety and soundness of M&T.

Our preference would be for the Agencies to maintain the flexible, principles-based approach of the Guidance to determine the population of significant risk-takers. The Guidance’s principles-based approach takes into consideration our risk profile as a banking organization. Maintaining this approach would allow us to continue the work we have done to effectively balance risk and reward in our incentive compensation arrangements.

¹ Guidance on Sound Incentive Compensation Policies, 75 Fed. Reg. 36,399 (Office of the Comptroller of the Currency, Treasury, Bd. of Governors of the Fed. Reserve Sys., Fed. Deposit Ins. Corp. and Office of the Thrift Supervision, Treasury June 25, 2010).

However, should the Agencies decide to move forward with the definition of significant risk-taker as proposed, we believe a rebuttable presumption at a dollar threshold of \$1 million would yield a more appropriate population of significant risk-takers. Due to our conservative pay practices and incentive compensation arrangements, the dollar threshold test would more accurately identify the employees within our organization who have the capacity and/or authority to take risks that could potentially result in material losses, while properly excluding employees who do not have such capabilities.

Potential Unintended Consequences of Implementing and Complying with the Proposal

The theme throughout the Guidance is that incentive compensation arrangements “should be commensurate with the size and complexity of the organization.”² This approach allows banking organizations to tailor incentive compensation arrangements in a way to not only attract and retain talent, but to also appropriately balance risk and reward while regulating personnel and administrative costs. However, the Proposal takes a much more stringent and prescriptive approach that would require more uniform incentive compensation arrangements across the banking industry. We believe such an approach would have a considerable impact on M&T’s ability to compete for talent and will likely drive talent to non-regulated institutions or other industries, further exposing M&T to risk (e.g., commercial real estate lenders going to private equity firms). In response, we would likely need to increase total compensation in order to deliver sufficient amounts of cash to attract and retain qualified talent.

By way of example, the Proposal would require a clawback period of seven years from the vesting date. This would result in compensation being kept “at-risk” for eleven years. This requirement is excessive and particularly detrimental to M&T’s ability to attract and retain talent. It would also be expensive and arduous to monitor at-risk compensation for eleven years for a continuously changing population. Based on our initial analysis, the average M&T senior executive officer and significant risk-taker, identified in accordance with the Proposal, is fifty-four years of age. Considering the earliest effective date of the rule would begin with the 2019 performance period, the clawback period would put compensation at risk well beyond the age of retirement for this population. Further, according to the Bureau of Labor Statistics, the median tenure of employees in the United States is 4.6 years.³ M&T’s average tenure of ten years is significantly higher than this number, but is still lower than the eleven years anticipated by the Proposal. The administrative burden of tracking compensation for eleven years, combined with the implications of potentially clawing back compensation beyond retirement and from former employees, would be costly and would not meaningfully contribute to risk-balancing of incentive compensation. Therefore, we strongly support The Clearing House’s comments regarding the proposed clawback requirements, particularly the requests for the clawback period to begin at the date of grant and to close in the case of death and disability.

Another example of an unintended consequence arises in the Proposal’s prescription of the mechanisms to be used for deferrals, requiring covered institutions to defer a substantial portion of incentive-based

² See, e.g., *Id.* at 36,413

³ U.S. Department of Labor, Bureau of Labor Statistics, *Employee Tenure in 2014* (2014), <http://www.bls.gov/news.release/pdf/tenure.pdf>.

compensation in equity and in cash. Presently, M&T does not have a cash deferral mechanism and implementing such a mechanism would be costly and of questionable effect. Such a prescriptive requirement restricts M&T's ability to determine the deferral mechanism that aligns best with our compensation strategy and risk management framework. While such a requirement may be effective in balancing risk and reward for some organizations, we believe it would not enhance the ability of our incentive compensation arrangements to balance risk and reward.

Overall, the prescriptive requirements of the Proposal would result in compensation structures that are anti-competitive, administratively complex, costly and potentially detrimental to M&T's ability to attract and retain high caliber talent. Such talent, we feel, is necessary to deliver our strategy while maximizing performance in a safe and sound manner for the benefit of our constituencies. The requirements of the Proposal are likely to drive qualified talent to other industries, including such unregulated industries as the shadow banking industry.

In the Guidance, the Agencies observed that incentive compensation arrangements are critical tools used to attract skilled employees, promote better performance and employee retention, provide retirement security for employees and allow an organization's personnel cost to vary along with revenues, in addition to being effective risk management tools.⁴ We respectfully request that the Agencies not dismiss their prior assessments that led to issuing the principles-based Guidance nor dismiss the extensive work that has already been completed under the Guidance by covered institutions to craft solutions that reflect the varying risk profiles of those institutions. The prescriptive nature and "one size fits all" approach of the Proposal hinders the progress that has been made and negatively impacts M&T's ability to use incentive compensation to influence and reward performance, including prudent risk management, and discounts our conservative pay practices and modest risk profile.

Thank you in advance for your consideration of our comments, as well as those included in The Clearing House's letter. Should you have questions or would like to further discuss our comments regarding the Proposal, please do not hesitate to contact me at (716) 842-2340.

Sincerely,



Janet M. Coletti
Executive Vice President

cc: Brent D. Baird
Robert G. Wilmers

⁴ 75 Fed. Reg. at 36,406